

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____) MDL No. 1456
IN RE PHARMACEUTICAL INDUSTRY) Master File No. 01-12257-PBS
AVERAGE WHOLESALE PRICE LITIGATION)
_____) Judge Patti B. Saris
)
THIS DOCUMENT RELATES TO:)
State of California, <i>et al.</i> v. Abbott Laboratories, <i>et al.</i>)
CASE NO: 1:03-cv-11226-PBS)
_____)

EX PARTE APPLICATION BY THE STATE OF CALIFORNIA
FOR REDACTING AND SEALING OF
INADVERTENT DISCLOSURE OF ERRONEOUS INFORMATION

The State of California ("California"), through its undersigned counsel, hereby submits this ex parte application to the Court for an order redacting and sealing erroneous information inadvertently included in an exhibit filed and served by the Commonwealth of Pennsylvania, and for related relief. The Relator, Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care"), joins in this application.

On or about February 7 or 8, 2005, the Commonwealth of Pennsylvania filed and served the "MEMORANDUM OF THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA IN OPPOSITION TO CLASS CERTIFICATION". Attached as Exhibit B to such document was a "Summary of State Litigations", a chart which purported to list defendants being sued by each state.

On February 9, 2005, Brian V. Frankel, Esq., attorney for the State of California, spoke with Donald E. Haviland, Esq., of Kline & Specter, outside counsel for the Commonwealth of

Pennsylvania. Mr. Haviland confirmed the chart was inadvertently inaccurate in many respects, including the reference to the defendants allegedly being sued by the State of California. The chart in no way reflects which defendants have actually been sued by the State of California. In fact, ABBOTT LABORATORIES, INC., WYETH, INC., and WYETH PHARMACEUTICALS, INC. are the only defendants which have seen sued by the State of California as of the present date.

Mr. Haviland informed Mr. Frankel that due to the many inaccuracies in the chart, the Commonwealth of Pennsylvania presently intends to file and serve a substitute, corrected Exhibit B. While the State of California appreciates such remedial action to be taken by the Commonwealth of Pennsylvania, the State of California believes that the relief requested herein is nonetheless absolutely necessary to ensure that the record be set straight as to the information contained within the chart, at least as it pertains to the State of California.

Therefore, the State of California respectfully requests the Court to order all parties served through Verilaw with the original Exhibit B, and anyone else possessing the original Exhibit B through any other means, to redact the information pertaining to the State of California which exists on such chart, to destroy any copies which still contain the State of California's information, and to retain only the redacted copies. In addition, the State of California respectfully requests the Court to order that any current possessors of the original Exhibit B are prohibited from distributing or otherwise publishing unredacted copies of the original Exhibit B. Furthermore, the State of California respectfully requests the Court to order that the original Exhibit B on file with the Court be sealed.

Such relief is necessary to ensure that current possessors of the original Exhibit B are not unwittingly led to believe the information in it is accurate. Such relief is also necessary to ensure

that the erroneous information contained in the original Exhibit B is not distributed any further and mistakenly taken to be true by subsequent, unsuspecting viewers.

A Proposed Order is provided for the Court.

Respectfully submitted,

BILL LOCKYER
Attorney General for the State of California

Dated: February 9, 2005

By: 

BRIAN V. FRANKEL
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DECLARATION OF BRIAN V. FRANKEL IN SUPPORT OF
EX PARTE APPLICATION BY THE STATE OF CALIFORNIA
FOR REDACTING AND SEALING OF
INADVERTENT DISCLOSURE OF ERRONEOUS INFORMATION

I, BRIAN V. FRANKEL, hereby declare and state as follows:

1. I am a Supervising Deputy Attorney General assigned to the Bureau of Medi-Cal Fraud and Elder Abuse, Criminal Division, California Department of Justice. I have been admitted *pro hac vice* to this Court.

2. I am informed that on or about February 7 or 8, 2005, the Commonwealth of Pennsylvania filed and served the "MEMORANDUM OF THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA IN OPPOSITION TO CLASS CERTIFICATION" in this MDL matter. Attached as "Exhibit B" to such document was a "Summary of State Litigations", a chart which purported to list defendants being sued by each state.

3. On February 9, 2005, I spoke on the telephone with Donald E. Haviland, Esq., of Kline & Specter, outside counsel for the Commonwealth of Pennsylvania. Mr. Haviland confirmed the chart was inadvertently inaccurate in many respects, including the reference to the defendants

allegedly being sued by the State of California.

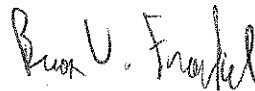
4. The chart in no way reflects which defendants have actually been sued by the State of California within this MDL matter. In fact, ABBOTT LABORATORIES, INC., WYETH, INC., and WYETH PHARMACEUTICALS, INC. are the only defendants which have been sued by the State of California as of the present date.

5. Mr. Haviland informed me that due to the many inaccuracies in the chart, the Commonwealth of Pennsylvania presently intends to file and serve a substitute, corrected Exhibit B.

6. I believe that the relief being requested by the State of California is necessary to ensure that current possessors of the original Exhibit B are not unwittingly led to believe the information in it is accurate. Such relief is also necessary to ensure that the erroneous information contained in the original Exhibit B is not distributed any further and mistakenly taken to be true by subsequent, unsuspecting viewers.

I have personal knowledge of the foregoing. This Declaration was executed on February 9, 2005 in San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



BRIAN V. FRANKEL
Supervising Deputy Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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**[PROPOSED] ORDER TO REDACT AND SEAL THE COMMONWEALTH OF
PENNSYLVANIA'S "EXHIBIT B"**

For good cause, having considered the ex parte application of the State of California to redact and seal information contained within the Commonwealth of Pennsylvania's "Exhibit B", which was attached to the "MEMORANDUM OF THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA IN OPPOSITION TO CLASS CERTIFICATION" filed and served on or about February 7 or 8, 2005 [hereafter the "original Exhibit B"], and for related relief,

IT IS HEREBY ORDERED that all parties served through Verilaw with the original Exhibit B, and anyone else possessing the original Exhibit B through any other means, redact the information pertaining to the State of California which exists on such chart, destroy any copies which still contain the State of California's information, and retain only the redacted copies.

IT IS FURTHER ORDERED that any current possessors of the original Exhibit B are prohibited from distributing or otherwise publishing unredacted copies of the original Exhibit B.

IT IS FURTHER ORDERED that the original Exhibit B on file with the Court be sealed.

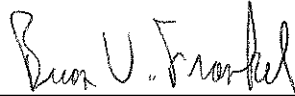
DATED: _____

PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Brian V. Frankel, hereby certify that on February 9, 2005, I caused true and correct copies of the: 1) EX PARTE APPLICATION BY THE STATE OF CALIFORNIA FOR REDACTING AND SEALING OF INADVERTENT DISCLOSURE OF ERRONEOUS INFORMATION, 2) DECLARATION OF BRIAN V. FRANKEL IN SUPPORT OF EX PARTE APPLICATION BY THE STATE OF CALIFORNIA FOR REDACTING AND SEALING OF INADVERTENT DISCLOSURE OF ERRONEOUS INFORMATION, and 3) [PROPOSED] ORDER TO REDACT AND SEAL THE COMMONWEALTH OF PENNSYLVANIA'S "EXHIBIT B", to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to Verilaw Technologies for posting and notification to all parties.

Dated: February 9, 2005



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